THE HON'BLE THE ACTING CHIEF JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 25004 OF 2006

DATE: 15-11-2007

Pandit Aradhya ... Petitioner

And

1. The State of Andhra Pradesh
rep. By the Prl. Secretary,
Department of Transport,
Secretariat, Hyderabad
And 5 others .... Respondents

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THE HON'BLE THE ACTING CHIEF JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NO. 25004 OF 2006

ORDER: (per THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN)

The action of the Deputy Transport Commissioner and Secretary, Road Transport Authority, Chittoor, in detaining the vehicle bearing registration No.KA01/B/9977, is under challenge in this writ petition as an order passed in violation of principles of natural justice and as being illegal, high handed, capricious, unjust etc. A consequential direction is sought to strike down the show cause notices dated 23.9.2006 and 27.9.2006, to deliver possession of the vehicle and to award damages of Rs.1.00 lakh.

W.P.M.P. No. 20367 of 2007 was filed to amend the prayer in the writ petition to include a challenge to the demand notice No.890/B1/2006 dated 7.11.2006 issued by the Licensing Officer, Office of the Deputy Transport Commissioner, Chittoor. Since the demand notice dated 07.11.2006 was issued pursuant to the show cause notice dated 23.09.2006 which is under challenge in the present writ petition, the W.P.M.P. is allowed.

In the show cause notice dated 23.9.2006 it is stated that, on 5.1.2006 at 1.30 p.m. near Gundubavi, the M.V. Inspector, Palamaner had stopped and checked the vehicle bearing chassis No.FZA025227 and found the following irregularities:

1) the driver of the vehicle stopped and handed over special permit and pucca contract carriage permit of PY01Y2075 said to have been issued by the Secretary, STA, Pondicherry and had absconded immediately when the checking officer asked for more information about the tourist party;
2) On thorough verification, it is noticed that the Reg.No.which was exhibited as PY01/A.2075 is fake one. On thorough verification of Ch.No.FZA025227 with the computer record in Karnataka the Chassis No.FZA 025227 tallied with the registration number of vehicle KA01B9977 which was on the rolls of the Registration Authority, Mysore with a seating capacity of 50 in all and the registered owner is Sri P.M.Pandit Aradhya.
3) The vehicle is carrying a tourist party picked up at Mandya proceed to Tourist places in Tamilnadu and Pondicherry from 28.12.2005 and returning to Mandya on 5.1.2006 after visiting Tirupati and that the vehicle which is found plying was without valid permit and A.P. Tax for quarters ending 31.12.2005 and 31.3.2006 was not paid.

It is further stated that therein the registered owner was liable to pay tax as an inter-state contract carriage under the A.P. Motor Vehicles Taxation Act, and for penalty under Section 6 thereof, for the quarters ending 31.12.2005 and 31.3.2006 at Rs.3500/- per seat per quarter totaling to Rs.3,43,000/- and the penalty thereupon was computed at Rs.4,28,750/-. The petitioner, who belonged to Mysore in Karnataka State, was directed to show cause, within seven days from the date of receipt of the notice, as to why the tax of Rs.3.43,000/- and penalty of Rs.4,28,750/- should not be collected from him.

In reply thereto, the petitioner sent a legal notice dated 11.10.2006 wherein he stated that his bus with Registration No. KA-01-B-9977 was plying within Karnataka State, that he was paying taxes regularly, that on 27.3.2006 he came to know that his

bus was illegally seized by Ontikappal Police Station, Mysore at the request of Gangavaram P.S, that the bus was handed over to Gangavaram police station, that the petitioner had approached the Court of the Judicial First Class Magistrate, Palamaner, and later the High Court of the A.P, and as per the orders of the High Court the bus was released by Gangavaram P.S, that the Motor Vehicles inspector and the police started harassing him and yet another show cause notice dated 27.09.2006 with concocted allegations came to be issued, that tax was paid upto 31.5.2006, that no tax was due as on 27.03.2006, that the allegation that tax and penalty of Rs.7,71,759/- was due was ex-facie false and motivated and, on such false and concocted allegations, the bus was seized abruptly and forcibly, that when the bus was released on 26.9.2006 officials of the Transport Department Sri Viswanath Reddy and Sri Ram Reddy, who were waiting outside the police station gate, seized the vehicle, that these officials forcibly took the bus away from the police station, that the chassis number and engine number mentioned in the show cause notice were not found in the complaint filed in the F.I.R in Cr.No.3/2006 dated 06.01.2006 and that these were apparently taken down by the officials when the bus was in their illegal custody at the police station and the records were manipulated in connivance with the police.

In the demand notice dated 7.11.2006 it is stated that after the vehicle was seized it was kept at Gangavaram police station, that on the intervening night of 5/6.1.2006 the driver of the bus Sri Krishnappa and two others, who were permitted to sleep in the bus to safeguard valuables like taperecorder etc., had taken the bus

away from the police station at about 00.15 hours, that the constable had noted that the registration number of the said bus had been changed to KA01/B9977, that the Sentry with the assistance of another had chased the bus upto A.P. border without success, that pursuant thereto the S.H.O, Gangavaram had registered a case, for causing theft of the vehicle, in Cr.No.3/06 dated 6.1.2006 under Sections 420, 353 and 379 I.P.C, that the vehicle was recovered on 27.3.2006 and that the police filed a charge sheet before the Judicial Magistrate of First Class, Palamaner in Crl.M.P.No.4240/06. It is further stated that, on enquiry with the State Transport Authority, Pondicherry, it was noticed that the vehicle bearing PY01/A 2075, was not in existence and the permit had been cancelled in the year 2000 for non-payment of taxes, that the chassis number of Bus No. PY 01/A.2075 was ALEF 173348 whereas the chassis number of the vehicle checked by the Motor Vehicles Inspector was FZA 025227 and that, on enquiry in the computer records of registration of vehicles in Karnataka State, the chassis number tallied with the chassis of the bus with registration No.KA01/B.9977. It is further stated that contract carriages of A.P, Tamilnadu, Pondicherry and Kerala have an agreement for single point tax based on which vehicles can ply in other contractual states without payment of tax, that as Karnataka was not a contract state its vehicles had to pay tax as and when they entered A.P. State on tourist visits, that the petitioner's reply to the show cause notice on 11.10.2006 was not convincing, that it was established that the vehicle with chassis No.FZA 025227(KA01/B.9977) had entered A.P. State with

a tourist party from Mandya and had proceeded to tourist places in Tamilnadu and Pondicherry from 31.12.2005 and was returning to Mandya on 5.1.2006 and hence the demand for Rs.7,71,750/- was confirmed. On 4.12.2006 a restraint order was issued in Form I.

In the second show cause notice dated 27.9.2006 it is stated that, at 9.00 p.m. on 26.9.2006 in Palamaner town, the Motor Vehicles Inspector had stopped the vehicle bearing No.KA01B9977 while proceeding from Palamaner to Mysore with no passengers and found certain irregularities and hence the vehicle was detained under Section 8 of the A.P. Motor Vehicle Taxation Act and under Section 207(1) of the Motor Vehicles Act and kept at the RTC depot, Palamaner. It is further stated that the Registered owner is liable to pay tax for A.P. State as Inter-State Contract Carriage for the quarter ending 30.9.2006. The petitioner was directed to show cause why tax of Rs.1,80,075/- should not be collected from him.

A demand notice was issued on 26.2.2007 wherein it is stated that the registered owner had acknowledged receipt of the show cause notice on 22.11.2006 and no explanation had been submitted and as such it was considered that there was no explanation to offer. The petitioner was informed that if failed to pay the tax of Rs.1,80,075/- within 10 days further action would be taken under the provisions of the Revenue Recovery Act to recover the arrears.

The petitioner contends that he was issued show cause notice dated 23.9.2006 with concocted allegations six months after the seizure, that the bus, which was allegedly involved in Cr.No.3/2006, bore Registration No. PY 01 A 2075 and was not his bus which bore Registration number KA-01-B-9977, that the

chassis number and engine number of PY 01 A 2075 were ALEH 173348 and ALEH 34965 respectively whereas the engine number and chassis number of bus bearing No.KA01/B/9977 was FZA025227 and FZE 281519 as per the certificate of registration, that seizure of the bus No.KA 01/B/9977 by V.V.Puram P.S. Mysore and its being handed over to Gangavaram P.S. in Palamaner, Chittoor District, was illegal, high handed and malafide, that neither was any notice issued to him nor were any reason assigned for seizing the vehicle and that the chassis and engine numbers shown in the show cause notice dated 23.9.2006 were not found in the F.I.R in Cr.No.3/06 dated 6.1.2006 which would establish that the records were manipulated by the R.T.O. officials after they had taken the vehicle into their illegal custody. The petitioner submits that the F.I.R dated 5.1.2006 does not contain the chassis number and engine number and the name of the driver and the very fact that the respondents did not seize the driving license of the driver and the R.C. book of the vehicle showed that they had left the driver after receiving illegal gratification and, thereafter, they came forward with false, self-contradictory and concocted statements, both with regards the chassis number, and of the driver having absconded, only to save the Motor Vehicles Inspector, that he had paid tax upto date i.e., 31.5.2006, that he was plying the vehicle only in Karnataka State and, therefore, the allegation that he did not have A.P. permit was meaningless. Petitioner would contend that the action of the respondents in issuing the demand notice dated 7.11.2006 was in violation of principles of natural justice, high-handed and an abuse of power.

The 2nd respondent, in its counter-affidavit, would submit

that despite the seizure order the petitioner had forcibly removed the vehicle on 5.1.2006, that the police officials had seized the vehicle on 27.3.2006 and had handed it over initially to V.V. Puram P.S, Mysore and later to Gangavaram P.S, Palamaner as the vehicle was involved in Cr. No. 3/2006, that the JFCM had released the vehicle on a bank guarantee of Rs.4.00 lakhs which condition was modified to a personal bond of Rs.50,000/- pursuant to the orders of the High Court in Criminal R.C.No.1433 of 2006. The 2nd respondent would submit that, when the vehicle was about leave the police station, the Motor Vehicles Inspector had seized the vehicle on 26.9.2006 and had issued a check report. According to the 2nd respondent, the vehicle with Registration No. PY 01/A-2075, (wherein a check report was issued on 5.1.2006), and the vehicle seized in Cr.No.3/2006 i.e KA 01/B.9977 were one and the same, were not of two different vehicles, and since the vehicle was being plied with fake permits and fake numbers, and as there was no inter-state permit granted either by the Government of Karnataka or Andhra Pradesh or by the State of Pondicherry, the vehicle was not released as the matter required further investigation. The 2nd respondent would submit that, since the petitioner had plied the vehicle in the State of A.P without a valid permit, a show cause notice was issued on 23.9.2006 directing him to pay Rs.7,71,750/- towards tax and penalty, that the petitioner had submitted his explanation on 11.10.2006 and, after considering the same, a demand notice was issued on 07.11.2006 calling upon the petitioner to pay Rs.7,71,750/- and that the petitioner had failed to pay the said amount which would have enabled him to challenge the order by way of an appeal under

Section12 of the Taxation Act. The 2nd respondent would contend that, if the vehicle was released without payment of tax, and taken away from the State of A.P., it would be difficult to recover any amount much less the demanded amount, that the second check report issued on 26.9.2006 disclosed that tax was payable by the petitioner and that, without payment of tax, the petitioner had sought to take away and remove the vehicle from the State of A.P. with a view to avoid payment of tax. The 2nd respondent would contend that seizure of the vehicle on 26.9.2006 is valid and in accordance with Section 66 of the Motor Vehicles Act, that they had also issued show cause notice dated 27.9.2006 for payment of tax of Rs.1,80,075/- for the quarter ending 30.9.2006 as the vehicle was plying without valid permit in the State of A.P. for which no explanation had been submitted and that tax was liable to be paid along with the amount already demanded pursuant to the demand notice dated 7.11.2006.

The Judicial Magistrate of First Class, Palamaner, in his order in Crl.M.P.4249 of 2006 dated 1.7.2006, held that the petitioner had filed a duplicate R.C. in his name as per which the vehicle No. was KA-01-B-9977, the Engine No.FZE28159 and Chassis No.FZA-025227. On physical verification of the vehicle, the JFCM observed that chassis No.FZA025227 and engine NO.FZE281519 were found on the chassis and the number on the Engine was shown as No.SZH78650U-E611. The JFCM observed that, on comparison with the R.C. filed by the petitioner, while the chassis number tallied, the engine number as per the R.C. tallied with the engine number found on the chassis but not the number found on the engine of the bus. The JFCM noted the contention of

the petitioner that the engine had broken down and at the time of bore the engine was changed and hence a new number was found, that when the petitioner was about to take endorsement for change of the engine number from Road Transport Authorities, the bus was seized.

It is the specific case of the petitioner, both in the writ petition filed before this Court, and in his letter dated 11.10.2006 submitted in reply to the show cause notice dated 23.9.2006, that the vehicle bearing Registration PY01A 2075 which was seized by the Motor Vehicles Inspector, Palamaner, pursuant to his vehicle check report dated 5.1.2006, was not his vehicle bearing registration No.KA01B9977. Petitioner would further contend that this vehicle check report dated 05.01.2006 is concocted as the F.I.R. in Crime No.3/2006 dated 6.1.2006, relating to theft of the bus bearing NO.PY01A2075, does not make any reference either to the chassis number of the bus or to its engine number. The respondents, however, contend that the bus with Registration No.KA01B9977 was plying within the State of Andhra Pradesh on 5.1.2006 with false registration NO.PY01A 2075 and that the vehicle check report of the Motor Vehicles Inspector, Palamaner dated 5.1.2006 shows the registration number of the vehicle as PY01A2075, the class of vehicle as heavy passenger vehicle, the permit No.20052921 issued by Pondicherry State as valid upto 5.1.2006, the name and address of the registered owner as Sri N.Krishna S/o Nanjundappa, the chassis No. as FZA 025227, the Engine No. as SHZ7865 WE 611 and under the column "**signature of driver**" it is endorsed "**driver absconded**".

It is evident both from the vehicle check report dated 5.1.2006, and the show cause notice dated 23.9.2006, that the driver of the vehicle had absconded leaving the bus behind. In the F.I.R in Cr.No.3/2006 dated 6.1.2006, under Sections 420 and 353 I.P.C for theft of the vehicle from the premises of the Gangavaram Police Station, it is stated that the bus bearing registration No.PY 01 A 2075, which was seized by the Motor Vehicle Inspector, Palamaner, was handed over to Gangavaram Police Station for safe custody, that the driver of the bus had falsely represented that he would sleep in the bus to safeguard valuables like tape recorder etc, that on the intervening night of 5/6 January, 2006 at about 00.15 hours in the premises of Gangavaram Police Station, the driver had taken away the bus pushing aside the police constable when he tried to stop the bus and had deterred him from discharging his official duties. This incident, relating to the theft of the bus from Gangavaram P.S, is reiterated in the demand notice dated 7.11.2006. If, indeed, the driver of the bus had absconded at 1.30 p.m. on 5.1.2006, when the vehicle check report was prepared, he could not have slept in the bus on the intervening night of 5/6th January, 2006 at Gangavaram P.S. If, on the other hand, the driver of the bus was available and had slept in the bus on the intervening night of 5/6th January, 2006, there is no explanation furnished by the respondents as to why his signature could not be taken on the vehicle check report dated 05.01.2006 and as to why it was mentioned therein, and in the show cause notice dated 23.9.2006, that the driver had absconded. There is no explanation forthcoming as to why the chassis number of the bus, mentioned as FZA025277 in the vehicle check report dated 05.01.2006, is not reflected in the F.I.R in Cr. No. 3/2006 dated

6.1.2006. These discrepancies give credence to the petitioner's contention that the records, including the vehicle check report dated 5.1.2006, were prepared, manipulated and ante-dated by R.T.O officials after they had taken the vehicle into their illegal custody on 27.3.2006 and that the entire endeavour of the respondents, in foisting a case on him, was to save the Motor Vehicles Inspector.

While the show cause notice dated 23.9.2006 is for payment of tax and penalty for having plied the vehicle within the State of Andhra Pradesh during the period 28.12.2005 and 5.1.2006, the show cause notice dated 27.9.2006 is for plying the bus on 26.9.2006 at 9.00 P.M. in Palamaner town. As admitted by the 2nd respondent, in his counter affidavit, the vehicle was brought by Police Officials from V.V. Puram Police Station in Mysore in Karnataka State to Gangavaram Police Station at Palamaner, Chittoor District in A.P. on 27.3.2006. It is not in dispute that, pursuant to the orders of this Court in Crl.R.C. No. 1430 of 2006 dated 7.9.2006, the Judicial Magistrate of First Class, Palamaner had directed that the vehicle be released, that on 26.9.2006 the petitioner had received his vehicle and when he was proceeding back to his native place in the State of Karnataka, the R.T.A officials had seized the bus. It is not as if the petitioner had voluntarily plied the vehicle within the State of A.P. on 26.09.2006. On the vehicle being directed to be released by this Court, the petitioner had necessarily to take the vehicle back to his home State of Karnataka and his endeavour to do so would not amount to plying the vehicle within the State of Andhra Pradesh without payment of tax. The show cause notice dated 27.9.2006, whereby the petitioner was charged to tax of Rs.1,80,075/-, itself

records that on 26.8.2006 an empty vehicle without passengers was proceeding from Palamaner to Mysore. Section 3 of the A.P. Motor Vehicles Taxation Act enables the Government to levy tax on a motor vehicle used or kept for use in a public place. Since the petitioner's vehicle was forcibly brought by the police officials, from Karnataka to Andhra Pradesh, on 27.3.2006 and, pursuant to the order of this Court in Crl.R.C.1430 of 2006 dated 7.9.2006, the petitioner was taking the empty vehicle back to Karnataka, it cannot be said that the petitioner had either used or kept the vehicle for use in the State of A.P, requiring him to pay motor vehicles tax. The show cause notice dated 27.09.2006, proposing to levy tax of Rs.1,80,075/- under Section 3 of the Taxation Act, must necessarily be held to be without jurisdiction and accordingly quashed.

The scope of interference under Article 226 of the Constitution of India against a show cause notice is extremely limited and this Court would, ordinarily, interfere only when the show cause notice is without jurisdiction. It is, however, well settled that use of power for an alien purpose, other than the one for which it is conferred, and misuse of power by an authority in breach of the law, taking into account extraneous matters and ignoring relevant matters, would be an order ultravires such powers and a case of fraud on power. (**Express Newspapers Pvt. Ltd v. Union of India**[1]). An ultravires order is, in a sense, an order passed without jurisdiction.

While the several discrepancies noted above in the Vehicle check report dated 5.1.2006, the F.I.R in Cr.No.3/06 dated 06.01.2006, in the show cause notice dated 23.9.2006 and the demand notice dated 7.11.2006 may well have justified the show

cause notice dated 23.9.2006 and the demand notice dated 7.11.2006 being quashed, it must not be lost sight of that this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, would not take upon itself the task of determining the truth or falsity of these allegations, as these are matters which are required to be examined by the competent authority. While the aforesaid discrepancies does give rise to the suspicion that the Vehicle check report dated 5.1.2006 may well have been prepared by the M.V. Inspector, Palamaner after the F.I.R was filed in Cr. No. 3 of 2006 dated 06.01.2006, these are all matters for the competent authority to consider. Except to state that the petitioner's letter dated 11.10.2006, submitted in reply to the show cause notice dated 23.9.2006, is not convincing, the demand notice dated 07.11.2006 does not even deal with the specific contentions of the petitioner, in his reply dated 11.10.2006, that the allegation that tax and penalty of Rs.7,71,750/- was due was ex facie false and motivated, that the chassis number and the engine number mentioned in the show cause notice dated 23.09.2006 were not found in the F.I.R in Cr.No.3/06 dated 6.1.2006, that these details were taken down by the officials when the bus was in their illegal custody and that the records were manipulated in connivance with the police.

The impugned demand notice dated 7.11.2006 is accordingly quashed and the matter is remanded back to the first respondent, who shall take into consideration the aforesaid observations, and the objections raised by the petitioner in his legal notice dated 11.10.2006, submitted in reply to the show cause notice dated 23.09.2006, and pass a reasoned order in accordance with law within a period of six weeks from today. It is

made clear that in case no orders are passed, within the time stipulated hereinabove, or the competent authority finds the petitioner's case to be genuine, the petitioner's vehicle shall be released forthwith. It needs no emphasis that in case the petitioner's contentions are found to be true, necessary action must be taken to punish the officials concerned.

The writ petition is, accordingly, allowed. No order as to costs.

Date: .11.2007

BILAL NAZKI,J

RAMESH RANGANATHAN,J

Asp/mrkr

[1] AIR 1986 SC 872